

## MEMORANDUM

Date: December 1, 2016

To: All counsel and parties appearing before Judges Pat E. Morgenstern-Clarren, Arthur I. Harris, and Jessica E. Price Smith in chapter 13 cases

From: Judges Morgenstern-Clarren, Harris, and Price Smith

Re: Avoiding totally unsecured liens under the authority of *In re Lane*, 280 F.3d 663 (6th Cir. 2002) or liens impairing exemptions under § 522(f) must be done by motion, not through special chapter 13 plan provisions

In an effort to establish uniform procedures in chapter 13 cases, the three bankruptcy judges in Cleveland would like to clarify that debtors seeking to avoid unsecured liens under the authority of *In re Lane*, 280 F.3d 663 (6th Cir. 2002) or liens impairing exemptions under § 522(f) must do so by motion, not through special chapter 13 plan provisions. Absent intervening precedent, the bankruptcy judges in Cleveland intend to adhere to this procedure at least until the effective date of any national chapter 13 plan form and related rules amendments, which would be no earlier than December 1, 2017.

Bankruptcy Rule 3012 currently provides for the valuation of a secured claim by motion. In addition, Bankruptcy Rule 4003(d) provides that “[a] proceeding to avoid a lien or other transfer of property exempt under § 522(f) of the Code “shall be by motion in accordance with Rule 9014.” While the proposed national chapter 13 plan form and related rules amendments currently under consideration would provide for the avoidance of these liens through a chapter 13 plan, as well as by motion, they have yet to take effect and, at this point, are simply a proposed form and proposed rule amendments.

Chapter 13 debtors are free to include special plan provisions indicating that they intend to file a separate motion to avoid a totally unsecured lien under the authority of *In re Lane* or § 522(f); however, the bankruptcy judges in Cleveland will not accept special plan provisions that purport to accomplish such avoidance without filing a separate motion.